

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ZACHARY J. BUTCHINO,

Plaintiff,

- against -

CITY OF PLATTSBURGH, CHAD WELCH, ADAM
WOOD, JOSHUA POND, KRISTOPHER MINOGUE,
JOEL VASSAR, AND LEVI RITTER, IN THEIR
INDIVIDUAL CAPACITIES,

Defendants

**STATEMENT OF
MATERIAL FACTS**

Case No. 8:20-CV-796
(MAD/CFH)

Pursuant to Local Rule 56.1(a) of the United States District Court for the Northern District of New York, Defendants City of Plattsburgh, Chad Welch, Adam Wood, Joshua Pond, Kristopher Minogue, Joel Vassar, and Levi Ritter, in their individual capacities, by and through their attorneys, FitzGerald Morris Baker Firth, P.C., contend there exists no genuine issues about the following material facts:

1. This action was commenced on or about July 15, 2020 by Plaintiff Zachary Butchino, (hereinafter “Plaintiff” or “Mr. Butchino”), by the filing of a Summons and Complaint (R-6; Docket # 1)¹. By way of his Complaint, Plaintiff alleged certain causes of action sounding in excessive force and failure to intervene. In addition to these alleged Constitutional violations, Plaintiff’s Complaint also includes causes of action pursuant to the Americans with Disabilities Act and Rehabilitation Act. Plaintiff seeks further redress against the City of Plattsburgh, asserting that the City is liable under §1983 pursuant to the Supreme Court’s decision in Monell v. Dep’t of Soc. Servs. Of City of New York, 436 U.S. 658 (1978), also referred to as a Monell claim.

2. Defendants interposed an Answer on or about August 7, 2020. (R-27; Docket #12).

¹ All references cited to as “R-__” refer to the numbered pages on the Record of Exhibits.

3. Plaintiff filed an Amended Complaint on or about October 20, 2020, naming Levi Ritter as the “Mike Doe” Defendant in the original Complaint. (R-34; Docket #17).

4. In addition to the automatic disclosures mandated by the Federal Rules of Civil Procedure, each of the parties were deposed. Mr. Butchino’s wife, Nicole Butchino, was also deposed as a non-party witness. To the extent such testimony is material, and without issue, they are summarized in relevant part hereafter.

PLAINTIFF’S COMPLAINT AGAINST THE CITY OF TROY
AND THE DEFENDANT OFFICERS

5. Mr. Butchino enlisted in the United States Army in 2007. (R-37 ¶34.)

6. Mr. Butchino served in Afghanistan from 2009-2010 (R-37 ¶36).

7. Plaintiff was diagnosed with post-traumatic stress disorder (“PTSD”) and has experienced anxiety and panic attacks. (R-37 ¶40).

8. Mr. Butchino struggles with self-medicating with alcohol. (R-37 ¶41).

9. As he was walking home, Mr. Butchino was stopped by a Plattsburgh Police Officer for questioning. (R-38 ¶42).

10. Mr. Butchino was arrested and transported to the Plattsburgh police station. (R-38 ¶46).

11. Mr. Butchino was searched for weapons and contraband. After this was completed, Mr. Butchino was placed in a holding cell. (R-38 ¶ 47).

12. Mr. Butchino began requesting his medication; this request was denied. (R-38 ¶ 52).

13. Mr. Butchino took off an article of his clothing, tied it around his neck and entwined the article of clothing with the bars of the holding cell. (R-38 ¶ 53).

14. He removed the clothing when Officers noticed the behavior. (R-38 ¶ 54).

15. After this incident, Mr. Butchino was moved to a cell where he could be monitored by an officer sitting outside the cell. (R-38 ¶57).

16. The Defendant Officers escorted Mr. Butchino to an open cell. (R-39 ¶ 63).

17. The Officers told Plaintiff to remove his shorts. (R-39 ¶ 64).

18. The Officers placed Mr. Butchino in the cell and closed the door. (R-40 ¶68).

19. The Officers re-opened the door, pointed a taser at Mr. Butchino, and again demanded that he remove his shorts. (R-40 ¶ 71).

20. Mr. Butchino attempted to close the door. (R-40 ¶71).

21. Ultimately, the Officers re-entered the cell and pushed Mr. Butchino on the bench against the wall. (R-40 ¶ 73).

22. In the course of using force against Mr. Butchino, the Defendant Officers removed Mr. Butchino's tank top and shorts. (R-41 ¶ 81).

23. Mr. Butchino was left in the cell while an Officer sat outside of the cell to monitor him. (R-41 ¶82).

24. After the incident between Mr. Butchino and the officers, he was bleeding from his nose. (R-41 ¶ 90).

25. Mr. Butchino was diagnosed with a deviated septum. (R-42 ¶ 94).

26. Mr. Butchino went to the Plattsburgh Police station in September 2017 to make a verbal complaint. (R-45 ¶113).

27. Mr. Butchino also submitted a written complaint about the incident in September 2017. (R-46 ¶ 117).

28. In response to Mr. Butchino's complaints, the Plattsburgh Police conducted an internal investigation regarding the incident. (R-46 ¶119; R-451, lines 17-18).

29. During the investigation, Officer Welch initially denied punching Mr. Butchino. (R-46 ¶121; R-744, lines 20-25; R-1127, lines 19-25).

30. Officer Welch later revised his statement and confirmed that he punched Mr. Butchino. (R-46 ¶ 123; R-14-20).

31. Officer Welch was reprimanded and lost one (1) week of vacation time. (R-46 ¶125; R-749, lines 17-20).

SURVEILLANCE VIDEOS FROM
THE PLATTSBURGH POLICE DEPARTMENT

32. The incident occurred in Plattsburgh City Police Department which had security cameras which captured events pertinent to the instant motion. The videos are titled Booking Video, Cell 1, and Cell 4 Disc 1, Cell 4 Disc 2, Cell 4 Disc 3, and Cell 4 disc 4. Copies of the videos have been provided to the Court and are referenced in the Record of Exhibits (R-1380).

Booking Video

33. Booking Video is taken from inside the booking room at the Plattsburgh Police Department. (R-1380, Booking).

34. The video is time-stamped with the accurate time.

35. The video begins with Mr. Butchino sitting on a bench in the booking room in front of Officer Chad Welch (hereinafter “Officer Welch”). (R-1380, Booking, 3:19:58 A.M.)

36. Officer Welch reviews the Suicide Prevention Screening Guideline questionnaire with Mr. Butchino. (R-1380, Booking, 3:20:01 A.M.)

37. In response to the question of whether Mr. Butchino has a history of drug or alcohol abuse, Mr. Butchino answers “no.” (R-1380, Booking, 3:21:03 A.M.)

38. In response to the question “[h]ave you ever head a mental health evaluation?” Mr. Butchino answers, “No. Actually, I was in Afghanistan in 2009.” (R-1380, Booking, 3:21:12 A.M.)

39. Mr. Butchino refuses to answer Officer Welch's questions and instead states "fuck you" five (5) times. (R-1380, Booking, 3:21:25 A.M.)

40. Mr. Butchino gets up from the bench and approaches Officer Welch's desk. (R-1380, Booking, 3:21:50 A.M.)

41. Officer Welch tells him to have a seat. (R-1380, Booking, 3:21:51 A.M.)

42. Mr. Butchino refuses. (R-1380, Booking, 3:21:52 A.M.)

43. Officer Welch sits Mr. Butchino down and handcuffs him to the bench. (R-1380, Booking, 3:21:57 A.M.)

44. Officer Welch states, "you're not going to sucker punch me like you sucker punched the guy in the street." (R-1380, Booking, 3:22:01 A.M.)

45. In response to the question "[h]ave you ever attempted to commit suicide?" Mr. Butchino answers, "No." (R-1380, Booking, 3:22:45 A.M.)

46. In response to the question "[a]re you thinking about suicide?" Mr. Butchino answers "What do you mean? No." (R-1380, Booking, 3:22:48 A.M.)

47. Mr. Butchino admits to having "at least eight (8) beers" that night. (R-1380, Booking, 3:23:09 A.M.)

48. Officer Welch conducts an inventory search of Mr. Butchino's pockets. At the time he is arrested Mr. Butchino has in his possession a cell phone, four (4) cigarettes, a twenty (20) dollar bill, a Visa card, and an I.D. (R-1380, Booking, 3:24:28 A.M.)

49. Mr. Butchino did not have any medication in his possession when he was arrested. (R-1380, Booking, 3:24:28 A.M.)

50. At no time while Mr. Butchino was in the booking room did he tell Officer Welch that he had PTSD, anxiety, or any other mental health issue. (R-1380, Booking, 3:19:58 A.M. – 3:25:46 A.M.)

51. Officer Welch placed Mr. Butchino in Cell 1. (R-1380, Booking, 3:25:57 A.M.)

52. Mr. Butchino begins beating on the cell bars. (R-1380, Booking, 3:48:46 A.M.)

53. Mr. Butchino screams “Excuse me, I’d like to take my medication.” (R-1380, Booking, 3:54:52 A.M.)

54. Between 3:54:52 A.M. and 4:00 A.M., Mr. Butchino screams for his medication over thirty (30) times. (R-1380, Booking, 3:54:52 A.M. – 4:00:00 A.M.)

55. Mr. Butchino starts crying. (R-1380, Booking, 4:20:44 A.M.)

56. One of the Defendant Officers opens the door to the cell block and asks Mr. Butchino if he is ok. (R-1380, Booking, 4:21:09 A.M.)

57. Mr. Butchino states, “fuck you dude!” (R-1380, Booking, 4:21:20 A.M.)

58. One of the Defendant Officers sees Mr. Butchino attempting to commit suicide. (R-1380, Booking, 4:44:09 A.M.)

59. The Defendant Officers run into the cell block. (R-1380, Booking, 4:44:22 A.M.)

60. From the cell block, a Defendant Officers states, “he was trying to commit suicide.” (R-1380, Booking, 4:44:34 A.M.)

61. A Defendant Officer states that Mr. Butchino would have to be on watch in Cell 4. (R-1380, Booking, 4:44:47 A.M.)

62. Officer Welch states “he might be combative when you get him out of the cell.” (R-1380, Booking, 4:45:00 A.M.)

63. When asked whether he was combative before, Officer Welch stated, “No, not really. I had to sit him down once.” (R-1380, Booking, 4:45:25 A.M.)

64. An Officer observes that Mr. Butchino’s shorts have a drawstring and so the shorts have to be removed. (R-1380, Booking, 4:45:58 A.M.)

65. Mr. Butchino is asked to remove the shorts for the first time. (R-1380, Booking, 4:46:04 A.M.)

66. An Officer states “he was trying to hang himself, and now he’s fighting.” (R-1380, Booking, 4:47:28 A.M.)

67. Officer Kristopher Minogue sits a chair in the doorway on constant watch of Mr. Butchino. (R-1380, Booking, 4:49:15 A.M.)

68. An Officer tells Mr. Butchino that they cannot give him his medication because they are not a jail. (R-1380, Booking, 4:51:37 A.M.)

69. Mr. Butchino is again told that the Officers cannot give him his medication “by law.” (R-1380, Booking, 4:53:11 A.M.)

70. An Officer asks Mr. Butchino what his medication is for. Mr. Butchino responds that it is for PTSD. (R-1380, Booking, 4:53:30 A.M.)

71. Mr. Butchino questions an Officer if he was the one who grabbed his genitals. (R-1380, Booking, 4:55:25 A.M.).

72. Officer Minogue states “wasn’t me. It’s not really something I have in my repertoire to do with another guy, but you know, it’s all cool, it’s the twenty-first century.” (R-1380, Booking, 4:55:27 A.M.)

73. Mr. Butchino states “I swear to God I’m gonna fucking beat you dude.” (R-1380, Booking, 5:13:39 A.M.)

Cell 1

74. Cell 1 is taken from inside the cellblock at the Plattsburgh Police Department and points directly at Cell 1. (R-1380, Cell 1).

75. Mr. Butchino is placed into the jail cell by Officer Welch. (R-1380, Cell 1, 3:25:56 A.M.)

76. He complies with the Officer Welch's orders and allows his handcuffs to be removed. (R-1380, Cell 1, 3:25:59 A.M.)

77. Plaintiff is laying on the bench in the cell. (R-1380, Cell 1, 3:28:30 A.M.)

78. Plaintiff begins to press against and rattle the cell door. (R-1380, Cell 1, 3:33:52 A.M.)

79. Plaintiff asks whether he gets a phone call. (R-1380, Cell 1, 3:43:03 A.M.)

80. Plaintiff begins shaking the cell door. (R-1380, Cell 1, 3:43:09 A.M.)

81. Plaintiff alternates shaking the cell door and asking about a phone call for several minutes. (R-1380, Cell 1, 3:43:04 A.M.-3:46:41 A.M.)

82. Plaintiff states, "I've hurt more people than you think I have." (R-1380, Cell 1, 3:46:43 A.M.)

83. Plaintiff states, "I've hurt a lot of fucking people." (R-1380, Cell 1, 3:48:06 A.M.)

84. Plaintiff removes his t-shirt. (R-1380, Cell 1, 3:48:07 A.M.)

85. Officer Welch enters the cell block and asks for Mr. Butchino to hand him the t-shirt. (R-1380, Cell 1, 3:49:08 A.M.)

86. In response, Mr. Butchino throws the shirt out of the cell at Officer Welch. (R-1380, Cell 1, 3:49:10 A.M.)

87. Officer Welch states, “you’d never assault anybody, that’s why you have an assault conviction.” (R-1380, Cell 1, 3:49:13 A.M.)

88. Mr. Butchino points his raised middle finger at Officer Welch and states, “fuck you dude.” (R-1380, Cell 1, 3:49:15 A.M.)

89. He begins to punch the cell door. (R-1380, Cell 1, 3:49:15 A.M.)

90. Mr. Butchino states, “excuse me, I’d like to take my medication.” (R-1380, Cell 1, 3:54:53 A.M.)

91. For the next eleven (11) minutes, Mr. Butchino alternates between beating on the cell door and yelling about his medication. At no point does he indicate that the medication is for PTSD or anxiety. (R-1380, Cell 1, 3:54:53 A.M.- 4:06:55 A.M.)

92. Mr. Butchino starts singing a song about killing and hurting people.

“I’ve killed a lot of hajis...shot ‘em in the chest and then the face...watched the back of their head blow out...[incomprehensible] or 2 or 3 blown out...it was all for my nation...I killed a lot of people...they almost killed a lot of my people...my friend is Georgia is dead because [incomprehensible]...you should give me my medication...to prevent me from killing more people...like the [incomprehensible] police...watching the soul go from their eyes...I’ve killed a lot of people...I shot him in the face and his wife and his kids too...I’ve killed a lot of people, but my favorite was the haji, my favorite was to shoot him in the head, and watch his eyeballs fall out of his face...and Plattsburgh don’t think I’ll shoot them in the face...and the Plattsburgh Police don’t think I give a fuck...people who I shot in the face don’t give a fuck...so you think Plattsburgh’s really gonna give a fuck...shot [incomprehensible] in the head...two shots in the head, one in the chest.” (R-1380, Cell 1, 4:06:57 A.M.)

93. Mr. Butchino states, “I know you can hear me, because I can hear you.” (R-1380, Cell 1, 4:18:25 A.M.)

94. He then goes on to say “I’m gonna sue the fuck out of you.” (R-1380, Cell 1, 4:18:35 A.M.)

95. Mr. Butchino sings

“I killed at least three farmers and I enjoyed it...I killed two women and I’m sad because of it...the women make me cry every night...and I also ran over a child...he must have been only three years old...[incomprehensible] I can’t be told...blood and guts everywhere...and there’s nothing I can do about it...I cry every night” (R-1380, Cell 1, 4:19:20 A.M.)

96. Mr. Butchino begins to cry. (R-1380, Cell 1, 4:20:47 A.M.)

97. Mr. Butchino sits on the floor and removes his shorts. (R-1380, Cell 1, 4:41:41 A.M.)

98. Mr. Butchino places one leg of his shorts over his head and then wraps the other leg around a bar of the cell. (R-1380, Cell 1, 4:43:34 A.M.)

99. Mr. Butchino ties the leg of the shorts to the cell. (R-1380, Cell 1, 4:43:53 A.M.)

100. An Officer enters the cell block. (R-1380, Cell 1, 4:44:25 A.M.)

101. Mr. Butchino refuses to hand the shorts over to the Officers and puts them back on. (R-1380, Cell 1, 4:45:11 A.M.)

102. The Officers open the cell door; Mr. Butchino leaves the cell and walks out of view of the camera. (R-1380, Cell 1, 4:45:44 A.M.)

Cell 4 – Disc 1

103. Cell 4 is taken from inside the cellblock at the Plattsburgh Police Department and points directly at Cell 4. Most of Cell 4 – Disc 1 does not have any audio. (R-1380, Cell 4 – Disc 1).

104. An Officer requests Mr. Butchino remove his shorts. (R-1380, Cell 4 – Disc 1, 4:46:01 A.M.)

105. Mr. Butchino states “get the fuck out of here.” (R-1380, Cell 4 – Disc 1, 4:46:02 A.M.)

106. Mr. Butchino walks into Cell 4. (R-1380, Cell 4 – Disc 1, 4:46:03 A.M.)

107. Mr. Butchino walks back out of the cell and towards the Officers, who are out of the screen. (R-1380, Cell 4 – Disc 1, 4:46:11 A.M.)

108. The Officers press Mr. Butchino up against the wall of the cell block. (R-1380, Cell 4 – Disc 1, 4:46:15 A.M.)

109. Mr. Butchino is struggling with the Officers, and his head hits the bars of the cell. (R-1380, Cell 4 – Disc 1, 4:46:20 A.M.)

110. Mr. Butchino is placed in the cell and the door is closed. (R-1380, Cell 4 – Disc 1, 4:46:27 A.M.)

111. Officer Welch and another Officer return to the cell and open the door. Officer Welch can be seen with the taser in his left hand. (R-1380, Cell 4 – Disc 1, 4:46:44 A.M.)

112. Mr. Butchino tries to close the cell door without giving the Officers his shorts. (R-1380, Cell 4 – Disc 1, 4:47:12 A.M.)

113. Several Officers pull the door back open. (R-1380, Cell 4 – Disc 1, 4:47:17 A.M.)

114. Officers Welch, Wood, Pond, and Minogue enter the cell with Mr. Butchino. (R-1380, Cell 4 – Disc 1, 4:47:29 A.M.)

115. Sergeant Vassar steps into the frame of the video, he stands at the back of the group at the door of the cell. (R-1380, Cell 4 – Disc 1, 4:47:31 A.M.)

116. Officer Welch passes the Taser out of the cell. (R-1380, Cell 4 – Disc 1, 4:47:54 A.M.)

117. For several seconds, the Defendant Officers and Mr. Butchino are in the cell together. (R-1380, Cell 4 – Disc 1, 4:47:22 A.M. – 4:48:18 A.M.)

118. The Defendant Officers leave Cell 4. (R-1380, Cell 4 – Disc 1, 4:48:18 A.M.)

119. When Mr. Butchino stands up, he is wearing a pair of underwear and his face is bloody. (R-1380, Cell 4 – Disc 1, 4:48:21 A.M.)

120. Mr. Butchino picks his tank top up from underneath the bench and attempts to wipe the blood from his face with it. (R-1380, Cell 4 – Disc 1, 4:59:29 A.M.)

121. He then hands the shirt to an Officer out of the view of the camera. (R-1380, Cell 4 – Disc 1, 4:58:06 A.M.)

DEPOSITION TESTIMONY OF ALL PARTIES
RELATING TO THE EVENTS OF AUGUST 19, 2017

122. On August 19, 2017, Mr. Butchino was arrested for assault. (R-126, lines 9-11).

123. Mr. Butchino plead to a one-year condition discharge for the assault charge. (R-126, lines 12-20).

124. Mr. Butchino was first diagnosed with PTSD in 2013. (R-131, lines 12-14).

125. On the night of the incident, Mr. Butchino had gone out drinking at bars in Plattsburgh. (R-160, lines 10-13).

126. Mr. Butchino drank between ten (10) to twelve (12) beers that night. (R-184, lines 10-18).

127. When he drank, he became belligerent. (R-185, lines 13-17).

128. Mr. Butchino was cuffed and transported from the scene on the street in Plattsburgh to the police station. (R-191, lines 20-23).

129. Chief Ritter, then Sergeant, was the shift supervisor on the night the incident occurred. (R-446, lines 8-13).

130. Mr. Butchino arrived at the police station at approximately 3:21 A.M. on August 19, 2017. (R-197, lines 5-11).

131. When he arrived at the Plattsburgh Police Station, Mr. Butchino was seated on a bench in the booking room. (R-195, lines 20-23).

132. Officer Chad Welch completed a standardized form to determine whether Mr. Butchino was a suicide risk. (R-819, lines 5-18).

133. At the time he was sitting on the bench in the booking room, Mr. Butchino was not thinking about killing himself. (R-199, lines 12-16).

134. While in Cell 1, Mr. Butchino wrapped an article of clothing around the bars and created a loop and put it over his head. (R-219, lines 2-5; R-983, lines 8-19).

135. Following his suicide attempt, Mr. Butchino was moved to Cell 4 to be on constant watch. (R-221, lines 17-24).

136. During the process of transferring Mr. Butchino, his head hit the bars of the cell. (R-915, lines 2-6; R-1222, lines 5-9).

137. Mr. Butchino came out of the cell in which he was placed. (R-215, lines 24-25).

138. He was pushed against the cell wall. (R-216, line 3; R-630, lines 16-23).

139. He was placed in the cell. (R-216, line 4; R-215, lines 24-25)

140. The cell door was closed. (R-630, lines 16-23)

141. The cell door was re-opened, at which point the Officers asked Mr. Butchino to remove his shorts while pointing a Taser at him. (R-224, lines 7-13; R-761, lines 15-18).

142. When the Officers entered the cell, they gave him a command to remove his shorts. (R-230, lines 9-13)

143. Mr. Butchino never took off his shorts. (R-230, lines 19-20).

144. Although he recalls being punched in the head, Mr. Butchino could not recall an exact number of punches. (R-238, lines 12-16).

145. Concerning the number of times he was punched, Mr. Butchino stated, “I can’t give you an exact number.” (R-238, line 16).

146. Mr. Butchino’s shorts were pulled off by Officer Minogue. (R-645, lines 14-19).

147. In addition to being punched, Mr. Butchino’s arms and legs were held down and an Officer grabbed his genitals. (R-243, lines 4-10; R-933, lines 13-17; R-1379).

148. After the incident in the cell, Mr. Butchino was placed on a constant watch. (R-663, lines 10-13; R-1379).

149. Mr. Butchino told the police that he had PTSD while he was in Cell 4. (R-182, lines 22-25; R-183, lines 2-3; R-676, lines 15-25; R-678, line 2).

TESTIMONY RELEVANT TO PLAINTIFF’S MONELL CLAIM

150. The Defendant Officers in this matter were trained at the Zone 9 Police Academy. (R-596, lines 13-15; R-726, lines 13-16; R-894, lines 11-13; R-1019, lines 19-24; R-1206, lines 7-10).

151. The Defendant Officers received training in the use of pain compliance techniques when effecting an arrest or effecting compliance from an arrestee when an officer’s safety is in jeopardy. (R-939, lines 8-24).

152. In 2020, Chief Levi Ritter promulgated a new Use of Force policy for the Plattsburgh Police Department. (R-437, lines 13-17).

153. The new policy was promulgated at the direction of then-Mayor Reed. (R-438, lines 7-8).

154. It was the policy of the Plattsburgh Police Department to screen an individual for being suicidal prior to being placed in a cell. (R-1156, lines 3-6).

155. If a person displayed signs of suicidal behavior, they would be on constant watch.
(R-1156, lines 6-12).

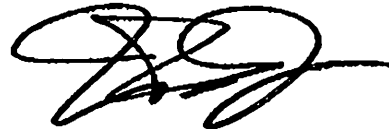
156. The Plattsburgh Police Department used a tool known as the “suicide prevention screening guidelines” for every subject put in a holding cell. (R-819, lines 5-7).

157. Alternatively, an individual may be transferred to a hospital for psychological evaluation. (R-1157, lines 9-13; R-692, lines 2-6).

158. The Defendant Officers attended an annual firearm and use of force training. (R-1173, lines 6-19.)

159. The Plattsburgh Police Department has a practice to make reasonable accommodations for people who are disabled. (R-1182, lines 2-6).

Dated: April 1, 2021



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